

LAW  
Sue  
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LODGED

FILED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

DEC 07 2005

DEC 23 2005

CLERK, U.S. DISTRICT COURT  
 DISTRICT OF HAWAIIat 2 o'clock and 40 min P.M.  
 SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

GILBERT GITHERE,

) CIVIL NO. 04-00116 DAE-LEK

Plaintiff,

) NOTICE OF MOTION; MOTION FOR  
 ) STAY OF EXECUTION OF COLLECTION  
 ) OF COSTS BILLED PENDING APPEAL;  
 ) DECLARATION OF COUNSEL; EXHIBIT  
 ) "A"; CERTIFICATE OF SERVICE

vs.

CONSOLIDATED AMUSEMENT  
 CORPORATION; ALOHA STADIUM  
 AUTHORITY, INC.; and JOHN TELLIS,  
 General Manager,) Hearing: 2/24/05  
 ) Time: 9:00 a.m.  
 ) Judge: David Alan Ezra

Defendants.

)

NOTICE OF MOTION

NOTICE IS HEREBY GIVEN that the following Motion for Stay of Execution of  
 Collection of Costs Billed Pending Appeal shall come on for hearing before the Honorable

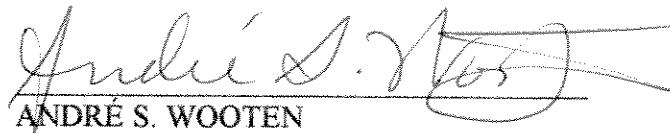
David Alan Ezra, Judge of the above-entitled court, in his/her courtroom

in the United States Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, on

2/24, 2005, at 9 o'clock A.m., or as soon thereafter as counsel

may be heard.

DATED: Honolulu, Hawaii, Dec 6, 2005.

  
ANDRÉ S. WOOTEN  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff,	)	MOTION FOR STAY OF EXECUTION OF
	)	COLLECTION OF COSTS BILLED
vs.	)	PENDING APPEAL
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION; ALOHA STADIUM	)	
AUTHORITY, INC.; and JOHN TELLIS,	)	
General Manager,	)	
	)	
Defendants.	)	
	)	

MOTION FOR STAY OF EXECUTION OF  
COLLECTION OF COSTS BILLED PENDING APPEAL

Comes now Plaintiff GILBERT GITHERE, by and through his attorney of record, André S. Wooten, who hereby petitions this Court for a stay of execution of the collection of the assessment of costs bill levied in this case on November 27 2005 (Exhibit "A"), as this matter is pending appeal before the Ninth Circuit Court of Appeals at this time.

This Motion is filed pursuant to Rules 7, 8, 12 and 62 of the Federal Rules of Civil Procedure and is supported by the attached Declaration of Counsel, exhibits, the records and files of this case and memorandum attached hereto.

DATED: Honolulu, Hawaii, Dec. 6, 2005.

  
ANDRE' S. WOOTEN  
Attorney for Plaintiff

## IN THE UNITED STATES DISTRICT COURT

## DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff,	)	DECLARATION OF COUNSEL
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION; ALOHA STADIUM	)	
AUTHORITY, INC.; and JOHN TELLIS,	)	
General Manager,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney for Plaintiff in the above-entitled matter.
2. This matter is presently on appeal before the Ninth Circuit Court of Appeals as Plaintiff has filed a Notice of Appeal, the Opening Brief for which is not yet due as of December 12, 2005, and a transcript having been ordered but not yet received.
3. Defendant Consolidated Amusement Company prevailed in a summary judgment motion which denied Plaintiff his constitutional right to a jury trial under the Fourteenth Amendment, due process and equal protection clauses and the First Amendment.
4. Plaintiff has a very good chance of prevailing on appeal based upon new Ninth Circuit cases liberally interpreting files which were not cited by the District Court.
5. The Defendant is a multi-state company operating throughout the west coast, if not the entire U.S.A. Indeed, the contract that they lost that was the subject of this case

was worth \$15 million a year and was just a small part of their theater and entertainment concession business statewide and nationwide. Plaintiff, on the other hand, is a small independent businessman, a vendor at the swap meet, for whom the assessment of \$4,000.00 in costs is a very high and hard burden, as he seeks to support his family and keep his business above water.

6. Balancing the equities involved and how much a \$4,000 assessment of cost damages prior to an entire resolution of the case mitigates for a stay of execution of the Bill of Costs of in excess of \$4,000 in this case, as the levy of costs would distinctly and directly hamper Plaintiff's ability to continue to do business and prosecute his appeal and deprive him of the resources to do so and, therefore, limit his constitutional rights to petition for redress of the violation of his constitutional rights in the court.

7. Therefore, based upon the balancing of the effect of immediate payment upon the parties, the burden would fall severely upon Plaintiff to pay costs prematurely, whereas the multi-national corporation, Consolidated Amusement Company, Inc., would scarcely feel the temporary denial or receipt of these funds at all.

Wherefore, Plaintiff respectfully requests that the Court grant this petition for a stay in the execution of collection of the Bill of Costs in this case pending appeal and a final resolution of this matter.

Further, Declarant sayeth naught.



ANDRE' S. WOOTEN



IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION AND ALOHA STADIUM	)	
AUTHORITY, INC., John Tellis, General	)	
Manager,	)	
	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were delivered upon the following parties at their last-known addresses by means of hand delivery on

December 7, 2005.

CINDY S. INOUYE, ESQ.  
JOHN M. CREGOR, JR., ESQ.  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
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Attorneys for Defendant  
ALOHA STADIUM AUTHORITY, INC.

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700 Bishop St., 15<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Attorneys for Defendants  
CONSOLIDATED AMUSEMENT COMPANY, LTD.  
and JOHN TELLIS

DATED: Honolulu, Hawaii, Dec 6, 2005.

  
ANDRE' S. WOOTEN  
Attorney for Plaintiff